



**CITY OF ROCKVILLE  
DEPARTMENT OF COMMUNITY PLANNING & DEVELOPMENT SERVICES  
STAFF REPORT**

**TO:** Planning Commission

**VIA:** Jim Wasilak, AICP, Chief of Planning  
Deane Mellander, Zoning Administrator

**FROM:** Joe Thompson, Planner II

**DATE:** April 30, 2010

**SUBJECT:** Zoning Text Amendment (ZTA) TXT2010-00226

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**RECOMMENDATION:** Recommend approval of the proposed Zoning Text Amendment to the Mayor and Council.

**REQUEST:** The ZTA proposes to modify (1) the definition of Open Area; (2) the definition of Public Use Space; (3) Section 25.13.05, Development Standards; and (4) Section 25.17.01, Public Use Space (see Attachment A).

**PREVIOUS RELATED ACTIONS:** On March 15, 2010, the Mayor and Council unanimously voted to authorize the filing of the subject ZTA.

**BACKGROUND:** The public use space requirement and companion fee in lieu of public use space initially came about via the RORZOR process, and was ultimately adopted and codified into the Zoning Ordinance. During the Zoning Ordinance process, there was a general consensus that there needed to be some "public benefit" derived from Mixed-Use (MX) Zone development.

Recent public comment on the recommended fee in lieu of public use space resulted in criticism of the current across-the-board 20% public use space requirement. Speakers at the December 7, 2009, public hearing on this issue stated that the current 20% public use space requirement imposed a disincentive to develop and/or redevelop properties in the MX Zones and that the fee in lieu required as the alternative was onerous. As a

result of the public testimony, the Mayor and Council deferred action on the fee in lieu of public use space calculation and directed staff to reexamine the current public use space requirement. The Mayor and Council also directed staff to meet and work with the Chamber of Commerce prior to bringing back formal ZTA recommendations for authorization.

Staff agrees that there should be public use space required for most MX Zone development, but recommends that it be tailored to the intent of the respective MX zone, and in some cases, lot size. The underlying assumption during the RORZOR process was that all development would be built to the maximum density allowed. In practice, development density is more a reflection of the market absorption in the area and the types of uses in the project. As a result, having the 20% "one-size-fits-all" public use space requirement is not practical or desirable in many instances.

In this context, staff considered the following questions as a basis to guide the research for revising the public use space requirement:

- Should there be an open area requirement in all of the MX Zones?
- Should all open areas be public use space?
- Should there be an across-the-board public use space requirement?
- Should there be a general reduction in the public use space requirement?
- Should the public use space requirement be different based on project type? (e.g., retail, residential, industrial)
- Should the ZTA include a provision to allow open area and public use space recommendations in a Master Plan to be implemented without an additional ZTA?

In various meetings with the Chamber, they provided examples and construction related information to demonstrate why the current across-the-board public use space requirement is not conducive to development and/or redevelopment. The Chamber provided advice on the general questions outlined above and also suggested the following:

- The open area and public use space requirement should be tailored to lot size. Smaller lots would have a smaller requirement.
- Revise the definitions for open area and public use space to allow green roofs and stormwater management areas to be eligible.
- A few of the MX Zones should not be required to have any public use space because of their character and intent.

The Chamber also recommended additional modifications. These include items such as allowing internal building spaces to count as public use space, scaling the public use space requirement to the proposed density of a project, and tailoring public use space to the types of uses proposed.

Staff views these modifications as changes that would significantly alter the overall intent of the public use space requirement and, as such, would require further discussion and direction from Mayor and Council. These items may better be addressed within a master plan context.

#### **ANALYSIS:**

The proposed text amendment is included as Attachment A and shows how the suggested modifications would be implemented in the Zoning Ordinance. The rationale for the proposed revisions are described below and summarized in the development standards table shown on page A-2 of the attachment. Attachment B is a map showing the location of all MX Zones.

The proposed modifications would reduce, and, in some cases, eliminate the public use space requirement in certain MX Zones. There would still be a minimum open area requirement in each MX Zone, which would not have to be publicly accessible. Also, in cases where there are specific public use space recommendations in a master plan, those recommendations would take precedence.

The **Mixed-Use Transit District (MXTD)** Zone and **Mixed-Use Corridor District (MXCD)** Zone represent the highest-density development zones in the City. They are the most likely to generate mixed-use developments, mixing housing, office and retail uses. As such, these zones should provide at least some minimum amount of public use space, since they are the likeliest to have a public draw.

*MXTD: 10% open area (15% open area if residential dwellings are provided); 10% public use space required.*

*MXCD: For sites < 20,000 sq. ft., 10% open area, of which 5% must be public use space. For sites 20,000 sq. ft or more, 15% open area, of which 10% must be public use space; the balance is open area for residents and occupants.*

The **Mixed-Use Neighborhood Commercial (MXNC) Zone** is similar to MXTD and MXCD where the zone is applied to large sites. However, on small sites the impact of a public use space requirement on development is quantitatively greater.

*MXNC - For sites < 20,000 sq. ft., 10% open area, with no public use space requirement. For sites 20,000 sq. ft or more, 10% open area, of which 5% must be public use space; the balance is open area for residents and occupants. Development including buildings taller than 45 ft. must provide 15% open area, of which 10% must be public use space per the new footnote #4 and additional proposed language in Section 25.13.05.b.2.(c).*

The **Mixed-Use Employment (MXE) Zone** is generally applied to those areas of the City that had developed as campus-style office parks. In general, these sites have already provided a fair amount of open space around their projects. However, in large measure, these sites do not attract the public.

*MXE - 20% open area, of which 5% must be public use space*

The **Mixed-Use Business (MXB) Zone** was developed to cover those areas of the City that have a variety of small office, commercial and service industrial uses currently with the potential to redevelop with a mix of uses. Many of the properties in the MXB Zone are on North Stonestreet Avenue and are less than 20,000 square feet.

*MXB - For sites < 20,000 sq. ft., 10% open area. For sites 20,000 sq. ft or more, 10% open area, of which 5% must be public use space.*

The **Mixed-Use Commercial (MXC) Zone** was developed to be applied to small, neighborhood-serving commercial sites. While these sites do draw the public, for the most part the businesses are convenience-oriented, in-and-out facilities that do not hold the public at the location.

*MXC - 10% open area*

The **Mixed-Use Transition (MXT) Zone** is primarily intended to cover areas where former single unit detached dwellings have been converted to offices, or nonresidential development has occurred at a similar scale to single family residential lots. Most of these sites retain much of their former residential character and as with the other zones that are primarily office uses, there is not much of a public draw.

*MXT - 10% open area*

Staff also recommends adding a new footnote to the Development Standards table to allow any specific open area and public use space recommendations in a master plan to take precedence.

The County is also reevaluating the amount and type of public use space that would be appropriate for their proposed Commercial/Residential (CR) Zone. They currently have a similar percentage requirement for "green area" in their standard commercial zones.

In addition, staff will reintroduce the fee in lieu of public use space calculation (see Attachment C) to the Mayor and Council for action after Discussion and Instruction. The fee in lieu of public use space was presented to the Planning Commission for discussion and recommendation to the Mayor and Council on January 28, 2009.

**RECOMMENDATION:**

Staff recommends approval of the ZTA for the reasons stated in this staff report.

Finally, staff recommends that the proportionate scale for expansions to existing development (previously approved by ZTA TXT2010-00224) be retained. The proposed text has been modified based on the revised percentage of public use space for each MX Zone as recommended in this staff report. The proportionate scale may need to be revised if the public use space percentages change as this ZTA goes through the review process.

**PUBLIC OUTREACH:** Notice of the proposed ZTA and the review schedule has been sent to all commercial property owners as well as all civic associations and homeowner's associations. In addition, staff met with the West End Civic Association (WECA).

**Attachments:**

- A. Proposed ZTA TXT2010-00226
- B. Map of MX Zones
- C. Mayor and Council Public Hearing Agenda Item from 12/7/09